

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
901 N. 5TH STREET
KANSAS CITY, KANSAS 66101

IN THE MATTER OF)	Docket No. CAA-07-2003-0081
)	
)	COMPLAINT AND NOTICE OF
Monarch Cement Company)	OPPORTUNITY FOR HEARING
449 1200 Street)	
P.O. Box 1000)	
Humbolt, Kansas 66748-1000)	

COMPLAINT

Section I
Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act (hereinafter "the Act"), 42 U.S.C. § 7413(d).
2. This complaint serves as notice that the United States Environmental Protection Agency (hereinafter "EPA") has reason to believe that Respondent has violated certain requirements of the Act, 42 U.S.C. § 7401 et seq., at 42 U.S.C. § 7412, and the regulations at 40 C.F.R. Part 63, Subpart LLL, and therefore is in violation of Section 112 of the Act. Furthermore, this Complaint serves as notice pursuant to Section 113(d)(2)(A), of EPA's intent to issue an order assessing penalties for such violation.

Section II
Parties

3. The Complainant, by delegation from the Administrator of the EPA, and the Regional Administrator, EPA Region VII, is the Director of the Air, RCRA, and Toxics Division, EPA, Region VII.
4. The Respondent is Monarch Cement Company, a "person" as defined in the Act and a Kansas corporation in good standing. Respondent's facility is located at 449 1200 Street, Humbolt, Kansas.

Section III
Statutory Framework

5. The regulations at 40 C.F.R. Part 63, Subpart LLL, were promulgated pursuant to Section 112 of the Act, and apply to Respondent's Portland cement plant at Humbolt, Kansas.

6. 40 C.F.R. § 63.1348 states that emissions from finished product storage bins shall not exceed ten percent (10%) opacity.
7. 40 C.F.R. §§ 63.1349(a), 63.6(c)(1) and 63.7(a)(2) state that affected sources must demonstrate initial compliance with applicable emission limits within 180 days of the compliance date for the affected source.
8. The compliance date for affected sources, including Respondent's storage bins, is June 14, 2002.
9. 40 C.F.R. § 63.6(i) provides for the granting of a request for extension of compliance with emissions standards, if said request is submitted no later than 120 days prior to the affected source's compliance date.

Section IV Violations

10. The Complainant hereby states and alleges that Respondent has violated the Act as follows:

Count I

11. Respondent's facility at Humbolt, Kansas includes six (6) cement storage silos.
12. During the year 2002, Respondent installed new dust collectors on each of its six (6) cement storage silos.
13. Respondent should have completed the initial performance tests on its six (6) silo dust collection systems by November 15, 2002.
14. By November 15, 2002, Respondent had failed to conduct any of the six (6) required initial performance tests on the cement storage silo dust collection systems, and had failed to submit a request for extension of compliance (See Attachment 1 to the Complaint).
15. Respondent therefore violated section 112 of the Act and the regulation at 40 C.F.R. §§ 63.1348, 63.1349, 63.6 and 63.7.

Section V Relief

16. Section 113(d) of the Act, 42 U.S.C. § 7413(d), authorizes a civil penalty of up to \$27,500 per day for each violation of the Act. The penalty proposed below is based upon the facts states in this Complaint, and on the nature, circumstances, extent and gravity of the above cited

violations in accordance with the Clean Air Act, Section 113(e) 42 U.S.C. § 7413(e) and the Stationary Source Civil Penalty Policy, October 25, 1991 ("Penalty Policy").

Proposed Penalty

17. For the violations stated herein, it is proposed that a penalty of \$37,400 be assessed. The actual proposed penalty was determined by calculation in accordance with the enclosed Penalty Policy, by combining the factors in the policies, including the size of respondent's business, the economic benefit of noncompliance and any willfulness of the Respondent.
18. Respondent has the right, upon submittal of certified financial information, to consideration of Respondent's financial condition in mitigation of the proposed penalty insofar as is necessary to permit Respondent to continue in business.
19. The Complaint was drafted based upon the best information available to Complainant, including financial information, and in consideration of, and in accordance with, the statutory requirements of Section 113(e) of the Act, 42 U.S.C. § 7413(e), and the enclosed Penalty Policy.
20. The proposed penalty set forth in paragraph 17 constitutes a demand only if the Respondent fails to raise bona fide issues of ability to pay, or other bona fide affirmative defenses relevant to the determination of any final policy.
21. Said issues of ability to pay or other affirmative defenses relevant to a final penalty, may and should be brought to the attention of the Complainant at the earliest opportunity in this proceeding.
22. Payment of the total penalty of \$37,400 shall be made by certified or cashier's check payable to the Treasurer, United States of America, and shall bear the docket number and shall be remitted to:

Mellon Bank
EPA-Region VII
Regional Hearing Clerk
P.O. Box 360748M
Philadelphia, Pennsylvania 15251

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Section VI Answer and Request for Hearing

23. Pursuant to Section 113(d)(2) of the Act, Respondent has the right to request a hearing to contest any material fact contained in this Complaint. To preserve this right, Respondent must

file a written answer and request for a hearing with the Regional Hearing Clerk, United States within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing. Said answer shall clearly and directly admit, deny or explain each of the factual allegations contained in this Complaint with regard to which Respondent has any knowledge, or shall clearly state that respondent has no knowledge as to particular factual allegations in the Complaint. The answer shall also state:

- a. The circumstances or arguments that are alleged to constitute the grounds for defense:
- b. The facts that Respondent intends to place as issues; and
- c. Whether a hearing is requested.

Failure to deny any of the factual allegations in the Complaint constitutes an admission of the undenied allegation.

24. If Respondent requests a hearing, it shall be held and conducted in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation or Suspension of Permits (40 C.F.R. Part 22). (Copy enclosed.)

25. If Respondent fails to file a written answer and request for a hearing within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing, such failure will constitute a binding admission of all of the allegations in this Complaint, and a waiver of Respondent's right to a hearing under the Act. A Default Order may thereafter be issued by the Regional Administrator, and the civil penalties proposed therein shall become due and payable without further proceedings.

26. Respondent is advised that, after the Complaint is issued, the Consolidated Rules of Practice prohibit any ex parte (unilateral) discussion of the merits of any action with the EPA Regional Administrator, Chief Judicial Officer, Administrator law Judge, or any person likely to advise there officials in the decision of this case.

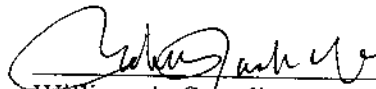
Section VII Settlement Conference

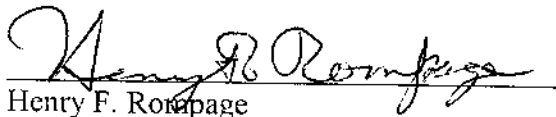
27. Whether or not a respondent requests a hearing, a respondent may request an informal settlement conference to discuss the facts of this case and settlement. To request an informal settlement conference, contact Henry F. Rompage, Attorney, Office of Regional Counsel, United States Environmental Protection Agency, Region VII, 901 North 5th Street, Kansas City, Kansas 66106, telephone 913-551-7280.

28. A request for an informal settlement conference does not extent the time to answer. Whether or not the informal settlement conference is pursued, to preserve the right to a hearing a written request for a hearing must be filed within thirty (30) days of service of this Complaint.

29. The EPA encouraged all parties against whom a civil penalty is proposed to pursue the possibility of settlement. However, no penalty reduction will be made simply because an informal settlement conference is held. If settlement is reached, the parties will enter into a written Consent Agreement and Final Order which will be issued by the Regional Administrator, United States Environmental Protection Agency, Region VII. The Issuance of such a Consent Agreement and Final Order shall constitute a waiver of Respondent's right to request a hearing on any matter stipulated to therein.

Date 2-18-03


William A. Spratlin
Director
Air, RCRA and Toxics Division



Henry F. Rompage
Attorney
Office of Regional Counsel

Enclosures: Consolidated Rules of Practice
Clean Air Act Penalty Policy
Penalty Policy Calculation

CERTIFICATION OF SERVICE

I certify that the original and one true copy of the foregoing Complaint were hand-delivered to the Regional Hearing Clerk, U.S. Environmental Protection Agency, 901 North 5th Street, Kansas City, Kansas 66106; and a true and correct copy of the foregoing Complaint, Consolidated Rules of Practice, the Clean Air Act Penalty Policy, a Small Business Information Sheet and Penalty Policy Calculation were mailed by certified mail, return receipt requested on this 19th day of February, 2003, to:

Lyndell G. Mosley
Registered Agent - Monarch Cement Company
449 1200 Street
Humbolt, Kansas 66748


Legal Technician